

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CONSERVATION NORTHWEST, a
Washington non-profit corporation,
and CASCADIA WILDLANDS PROJECT, an
Oregon non-profit corporation,

Plaintiffs,

v.

The UNITED STATES FOREST SERVICE,
an agency of the United States
Department of Agriculture,

Defendant,

and

BOISE BUILDING SOLUTIONS
MANUFACTURING L.L.C., a Delaware
limited liability company,

Defendant-Intervenor.

NO. CV-05-0220-EFS

**ORDER DENYING PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION AND CONTINUING
INJUNCTION FOR ONE WEEK**

On August 25, 2005, the Court heard oral argument on Plaintiffs Conservation Northwest and Cascadia Wildlands Project's Motion for Preliminary Injunction, (Ct. Rec. 3). Ms. Karen S. Lindholdt appeared on behalf of Plaintiffs Conservation Northwest and Cascadia Wildlands Project ("Plaintiffs"), while Ms. Julia Jones represented Defendant United States Forest Service ("USFS") and Mr. Shay Scott represented Defendant-Intervenor Boise Building Solutions Manufacturing L.L.C.

1 ("Boise"). After reviewing the submitted material, taking oral argument,
2 and considering relevant authority, the Court is fully informed and
3 hereby **denies** Plaintiffs' Preliminary Injunction Motion, (Ct. Rec. 3).

4 I. Background

5 In August 2004, the Fischer Fire burned approximately 16,513 acres
6 of woodlands within the Wenatchee River Watershed. The Fischer Fire
7 Project ("FFP") - instituted in response to this large wildfire - area
8 consists of the 10,873 acres of burned woodland located in the Okanogan
9 and Wenatchee National Forests as well as two small helicopter landing
10 areas outside the fire perimeter. EA at 1-3. The remainder of the
11 burned land includes 300 acres on other federal land, 1,074 acres of
12 Washington State Department of Natural Resources land, and 4,287 acres
13 of private land. *Id.* Within the FFP, 1,037 acres are allocated as
14 Managed Late Successional Area ("MLSA"). EA at 1-4. These areas were
15 identified to protect and enhance conditions of late-successional and
16 old-growth ecosystems, which serve as habitat for late-successional and
17 old-growth species, such as the northern spotted owl. EA at 1-23. While
18 the northern spotted owl no longer resides in the MLSA allocation, there
19 is one historic activity center in the Eagle MLSA outside the project
20 area that has been unoccupied since 1997. *Id.* The remainder of the FFP
21 area, 9,836 acres, is comprised of Matrix land. EA at 1-4. Matrix land
22 represents the area traditionally used for timber harvest and
23 silvicultural activities. EA at 1-6.

24 In March 2005, the USFS submitted their final EA for the FFP. On
25 March 29, 2005, James Boynton, Forest Supervisor for the Okanogan-
26 Wenatchee National Forest, signed a Finding of No Significant Impact

1 Decision Notice ("DN") for the FFP. The FFP was divided into three
2 salvage sales: the Blag in Black, Cow, and Rollin Rock. On March 28,
3 2005, Pacific Northwest Regional Forester, Linda Goodman determined the
4 FFP was an emergency situation and exempted the first two sales from stay
5 pursuant to 36 C.F.R. § 215.10 as the timber value would decrease by
6 \$893,804 if not instituted quickly. DN at 26. As such, the Blag in
7 Black and Cow salvage sales were awarded on April 18, 2005, and May 11,
8 2005, respectively. (Ct. Rec. 20 ¶ 7-8.) Mr. Boynton did not include
9 the Rollin Rock salvage sale ("RRSS"), into the emergency situation
10 request because it contained a higher percentage of Douglas fir trees,
11 less susceptible to quick deterioration and, thereby, less susceptible
12 a loss of value. (Ct. Rec. 31-4 ¶ 7.) The RRSS also contained all of
13 the Eagle MLSA land allocations of this FFP, creating greater need for
14 public commentary. *Id.* Since the RRSS was not included in the emergency
15 situation request, it was not advertised until June 18, 2005. On July
16 14, 2005, the RRSS contract was purchased by Boise Building Solutions
17 Manufacturing, L.L.C. ("Boise"). (Ct. Rec. 20 ¶ 12, 14.) The RRSS was
18 scheduled to begin on July 27, 2005. *Id.* ¶ 6.

19 Mr. Boynton certified in the DN no significant impacts would occur
20 as a result of the FFP, and thereby, the USFS did not have to prepare an
21 Environmental Impact Statement ("EIS"). In response, Plaintiffs filed
22 their Temporary Restraining Order and PI motion for the RRSS on July 22,
23 2005, (Ct. Rec. 3). Plaintiffs assert six claims for relief: (1) the
24 USFS failed to prepare an EIS for the FFP in violation of the National
25 Environmental Policy Act ("NEPA"), (2) the USFS failed to disclose and
26 analyze the environmental impacts of the FFP in violation of NEPA, (3)

1 the USFS did not consider a reasonable range of alternatives in violation
2 of NEPA, (4) the USFS's snag removal authorization in the MSLA violates
3 the National Forest Management Act ("NFMA"), (5) salvage within the Eagle
4 MSLA for the purpose of economic recovery violates NFMA, and (6) the USFS
5 did not comply with the soil standards and guidelines of the Wenatchee
6 Land Resource Management Plan ("WLRMP") in violation of NFMA. (Ct. Rec.
7 1 at 13-22.)

8 **II. Preliminary Injunction Standard**

9 A preliminary injunction is an extraordinary remedy. *Weinberger v.*
10 *Romero-Barcelo*, 102 S. Ct. 1798, 1803 (1982); *Hawai'i County Green Party*
11 *v. Clinton*, 980 F.Supp. 1160, 1167 (D. Hawai'i 1997). In the Ninth
12 Circuit, a court may grant such a remedy if a plaintiff "demonstrates
13 either a combination of probable success on the merits and the
14 possibility of irreparable injury or that serious questions are raised
15 and the balance of hardships tips sharply in his favor." *Save Our*
16 *Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1120 (9th Cir. 2005) (quoting
17 *Johnson v. Cal. State Bd. of Accountancy*, 72 F.3d 1427, 1430 (9th Cir.
18 1995)). "These two formulations represent two points on a sliding scale
19 in which the required degree of irreparable harm increases as the
20 probability of success decreases." *Roe v. Anderson*, 134 F.3d 1400, 1402
21 (9th Cir. 1998) (quoting *United States v. Nutri-cology, Inc.*, 982 F.2d
22 394, 397 (9th Cir. 1992)). Plaintiff, as the party seeking injunctive
23 relief, bears the burden of demonstrating these factors justifying relief
24 by *clear and convincing evidence*. *Granny Goose Foods, Inc. v.*
25 *Brotherhood of Teamsters*, 415 U.S. 423, 441 (1974) (emphasis added).

1 "Injunctive relief is an equitable remedy, requiring the court to
2 engage in the traditional balance of harms analysis, even in the context
3 of environmental litigation." *Forest Conservation Council v. U.S. Forest*
4 *Serv.*, 66 F.3d 1489, 1496 (9th Cir. 1995). The Supreme Court has held
5 that insufficient evaluation of environmental impact under NEPA does not
6 create a presumption of irreparable injury. See *Amoco Prod. Co. v.*
7 *Village of Gambell*, 480 U.S. 531, 545 (1987). However, the Ninth Circuit
8 observed "[e]nvironmental injury, by its nature, can seldom be adequately
9 remedied by money damages and is often permanent or at least of long
10 duration, i.e., irreparable." *Idaho Sporting Cong. Inc. v. Alexander*,
11 222 F.3d 562, 569 (9th Cir. 2000) (citing *Amoco*, 480 U.S. at 545).
12 Therefore, "when the environmental injury is 'sufficiently likely, the
13 balance of harms will usually favor the issuance of an injunction to
14 protect the environment.'" *Id.* Irreparable harm is defined as an actual
15 or concrete harm, or the imminent threat of an actual or concrete harm.
16 *Los Angeles Memorial Coliseum Comm'n v. National Football League*, 634
17 F.2d 1197, 1200 (9th Cir. 1980). A threat of harm will not be considered
18 "imminent," if it is based on merely remote possibilities or speculation.
19 *Carribean Marine Serv. Co. v. Baldrige*, 844 F.2d 668, 675 (9th Cir.
20 1988).

21 In reviewing the USFS's compliance with NEPA and NFMA, the court
22 must determine whether the agency's actions were "arbitrary and
23 capricious, an abuse of discretion, or otherwise not in accordance with
24 the law." *Or. Nat. Resources Council v. Loew*, 109 F.3d 521, 526 (9th
25 Cir. 1997). Review under such a standard is narrow and highly
26 deferential, only requiring the agency to "articulate a rational

1 connection between the facts found and the conclusions made." *Id.* The
2 Ninth Circuit requires that a challenge to a decision to not prepare an
3 initial EIS must be reviewed under the arbitrary and capricious standard.
4 *Greenpeace Action*, 14 F.3d at 1331. Given the narrowness of the standard
5 of review, the Court recognizes it may not substitute its own judgment
6 for that of the agency concerning the wisdom or prudence of a proposed
7 action. *W. Radio Services Co., Inc. v. Glickman*, 113 F.3d 966, 970 (9th
8 Cir. 1997).

9 **III. Analysis**

10 **A. NEPA - EIS Determination**

11 Plaintiffs assert the USFS violated NEPA by not preparing an EIS.
12 The purpose of NEPA is to foster better decision-making and informed
13 public participation for actions affecting both people and the
14 environment. 42 U.S.C. § 4321; 40 C.F.R. § 1501.1(c). To that end, NEPA
15 is a procedural, rather than substantive statute; it does not force an
16 agency to choose the most environmentally sound alternative, but it does
17 ensure that agency action is "fully informed and well considered." *Vt.*
18 *Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S.
19 519, 558 (1978). One of NEPA's procedural requirements is federal
20 agencies are to prepare a detailed EIS for "major Federal actions
21 significantly affecting the quality of the human environment." 42 U.S.C.
22 § 4332(2)(C). In order to determine whether a proposed action requires
23 preparation of an EIS, the USFS must conduct an EA of the proposed
24 action. 40 C.F.R. §§ 1501.4, 1508.9. If the agency determines the
25 effects will not be significant, it must then issue a FONSI. 40 C.F.R.
26 § 1508.13. "An agency's decision not to prepare an EIS . . . may be

1 overturned only if it was arbitrary, capricious, an abuse of discretion,
2 or otherwise not in accordance with law." *Cold Mountain v. Garber*, 375
3 F.3d 884, 892 (9th Cir. 2004).

4 "An EA need not conform to all the requirements of an EIS."
5 *Citizens for Better Forestry v. U.S. Dep't of Agric.*, 341 F.3d 961 (9th
6 Cir. 2003) (quoting *S. Or. Citizens Against Toxic Sprays, Inc. v. Clark*,
7 720 F.2d 1475, 1480 (9th Cir. 1983)). However, "[n]o matter how
8 thorough, an EA can never substitute for preparation of an EIS, if the
9 proposed action could *significantly* affect the environment." *Anderson*
10 *v. Evans*, 371 F.3d 475, 494 (9th Cir. 2004). "In determining whether an
11 action will 'significantly' effect the environment, the CEQ regulations
12 provide certain factors should be considered." *Alaska Center for Env't*
13 *v. U.S. Forest Serv.*, 189 F.3d 851, 859 (9th Cir. 1999).

14 Plaintiffs assert the FFP will 'significantly' affect the
15 environment under several of the factors discussed in *Alaska Center for*
16 *Env't* and enumerated in 40 C.F.R. § 1508.27(b). The factors identified
17 by Plaintiffs are: (1) the unique characteristics of the area, (2) the
18 highly controversial effects of the project on the human environment, (3)
19 the unique risks posed by the project, and (4) the cumulative impacts of
20 the project. *Id.* The remaining factor cited by Plaintiffs - federal law
21 violations of NFMA and NEPA - is discussed generally throughout this
22 order.

23 1. Unique Characteristics: MLSA

24 Plaintiffs contend the USFS has not provided sufficient rational
25 without an EIS as to why the FFP will not adversely effect the Eagle
26 MLSA. (Ct. Rec. 15-1 at 9.) They argue the extensive snag removal and

1 downwood, which characterizes late-successional habitat, will have
2 significant impacts on the MLSA and the habitat it supports. (Ct. Rec.
3 15-1 at 8.)

4 The Northwest Forest Plan ("NFP") was originally instituted in 1992
5 to effectuate two primary goals: "the need for forest habitat and the
6 need for forest products." (Ct. Rec. 31-5 at 4.) This implicates both
7 the long-term health of the forest ecosystems as well as maintaining a
8 sustainable supply of timber for local economies. *Id.* at 5. The MLSA
9 allocations were specifically identified in 1994 "for certain owl
10 activity centers . . . where regular and frequent fire is a natural part
11 of the ecosystem. Certain silvicultural treatments and fire hazard
12 reduction treatments are permitted to help prevent complete stand
13 destruction from large catastrophic events." NFP at C-23. Further,
14 salvage guidelines under the NFP "are intended to prevent negative
15 effects on late-successional habitat, while permitting some commercial
16 wood removal." *Id.* at C-13. To this expressed end, the EA evaluated the
17 effects of salvage logging in the Eagle MLSA, which will promote
18 reforestation and proper snag densities, and the Court finds the USFS
19 reasonably concluded the methods of salvage would cause no significant
20 impact on the MLSA region. EA at 3-15.

21 Of the 1037 acres of MLSA allocated land in the FFP area, salvaging
22 will only occur on 350 acres. EA at 1-4; (Ct. Rec. 31-4 ¶ 4.) Snag
23 retention levels in the MLSA will follow the guidelines expressed in the
24 NFP, such that a sufficient amount of snags for wildlife habitat will
25 remain until approximately 80 years following salvage and reforestation
26 when new snag recruitment can begin from the green stand. DN at 10; EA

1 at 3-90. To accomplish this goal, the USFS only plans to salvage trees
2 up to 20" in diameter with a 75 percent or higher probability of dying
3 and injured trees larger than 20" in diameter with an 85 percent or
4 higher probability of dying. DN at 10. Further, all trees larger than
5 36" in diameter will be retained. *Id.* The FFP also proposes to harvest
6 in high fire intensity areas where current snag levels far exceed
7 management goals for the Eagle MLSA due to the extreme effects of the
8 fire. EA at 3-91. No trees will be salvaged in suitable spotted owl
9 habitat, of central importance to the NFP. *Id.* at 3-85. Neither will
10 harvest occur in 42 percent of the burned portion of the Eagle MLSA. *Id.*
11 at 3-90.

12 Through this plan, the USFS has articulated a sufficient rational
13 connection between the facts found and the conclusion that no significant
14 impact will occur in the Eagle MLSA, which is all that is required under
15 Ninth Circuit review. *See Loew*, 109 F.3d at 526. Further, the Court is
16 mindful that once the USFS "makes a factual determination on whether the
17 impacts are significant or not, that decision implicates substantial
18 agency expertise and is entitled to deference." *Alaska Ctr. for Env't*,
19 189 F.3d at 859. As such, the Court is likely to ultimately find the
20 USFS's decision to not prepare an EIS is neither arbitrary nor capricious
21 nor does it express a clear error of judgment. *Id.*

22 **b. Controversial Effects and Unique Risks**

23 Plaintiffs also argue preparation of an EIS is required since the
24 impacts of the project are characterized by scientific controversy and
25 pose unique risks to the environment. (Ct. Rec. 15-1 at 9.) Scientific
26 controversy, in the context of NEPA disputes, refers to a "substantial

1 dispute [about] the size, nature, or effect of the major Federal action
2 rather than the existence of opposition to a use." *Anderson v. Evans*,
3 371 F.3d 475, 489 (9th Cir. 2004) (quoting *Blue Mountains Biodiversity*
4 *Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998)). Plaintiffs'
5 three central claims regarding scientific controversy argument are the
6 USFS's: (1) inappropriate reliance on DecAID, (2) misuse of the WEPP
7 model, and (3) apparent disregard for the *Beschta* report. (Ct. Rec. 15-1
8 at 9-11.)

9 DecAID stands for 'decayed wood advisor' and is an advisory tool
10 developed to help wildlife managers evaluate the effects of forest
11 conditions on wildlife that use snags and downwood. EA at 3-91. Within
12 their memorandum, Plaintiffs claim DecAID's authors stated DecAID "does
13 not specifically address effects of fire." (Ct. Rec. 15-1 at 10.)
14 Plaintiffs argue the USFS improperly relies on DecAID to "model snag
15 retention levels within harvest units" for post-fire logging. (Ct. Rec.
16 15-1 at 10.) However, the EA claims to only use DecAID as a "comparison
17 tool for wildlife-use data." EA at 3-91-92; (Ct. Rec. 31-6 ¶ 16.)
18 Further, the EA states:

19 DecAID also provides decayed wood (snags and logs) inventory
20 data, but this will not be used because fire exclusion in this
21 dry forest environment has led to changes in current levels,
22 composition, and distribution of decayed wood elements, and
they may not reflect historic or natural conditions . . . thus,
could be misleading and inappropriate.

23 EA at 3-92. Thus, the Court finds the USFS did not rely on DecAID to
24 provide snag inventory retention numbers for the FFP, but rather followed
25 the MLSA recommendations embodied in the WLRMP, which "were adopted for
26 the entire project area." EA at 3-91.

1 WEPP stands for the Water Erosion Prediction Program and was used
2 in water quality and soil erosion analyses. *Id.* at 3-58. Plaintiffs
3 challenge the use of the Disturbed WEPP to model impacts to soils and
4 water quality caused by the FFP. (Ct. Rec. 15-1 at 10.) Contrary to
5 Plaintiffs' position, however, there are technical documents in support
6 of the USFS's use of the Disturbed WEPP to predict runoff and sediment
7 yield from forest fires and harvested forests. See EA at 3-58 & L-10
8 (citing to technical documents produced by Elliot, W.J.). Since
9 substantial deference is given to the USFS's decision to resolve
10 scientific disputes as it sees fit, and because scientific evidence
11 supports the USFS's application of the Disturbed Wepp, the Court is not
12 likely to find the USFS's use of the Disturbed Wepp to be improper.
13 *Friends of Endangered Species, Inc. v. Jantzen*, 760 F.2d 976, 986 (9th
14 Cir. 1985).

15 Plaintiffs also allege the USFS ignored the impacts of post-fire
16 salvage logging discussed in the *Beschta* Report. (Ct. Rec. 15-1 at 9-
17 10.) Yet, the EA references the *Beschta* Report's recommendation that
18 natural recovery be instituted following a fire in many different places
19 within the EA. EA at 1-31, 1-32, 2-33, 3-7, 3-9, 3-88. Further, the no-
20 action alternative - discussed in detail along with only three other
21 viable alternatives throughout the EA - embodies this recommendation by
22 proposing no salvage logging or reforestation. EA at 2-4, 2-5. However,
23 since forest fire suppression and ecosystem restoration were not the
24 focus of the EA given its expressed purposes, many issues raised in the
25 *Beschta* Report were not analyzed in the fullest detail in the EA. *Id.*
26 at 1-31, 1-32. NEPA does not require the USFS to "consider every

1 possible alternative to a proposed action, nor must it consider
2 alternatives that are unlikely to be implemented or those inconsistent
3 with its basic policy objectives." *Seattle Audobon Society v. Moseley*,
4 80 F.3d 1401, 1404 (9th Cir. 1996). Further, where the USFS supports its
5 conclusions with thorough analysis, the court's function is not to
6 referee a dispute between scientists. See *Ariz. Cattle Growers' Ass'n*
7 *v. United States Fish & Wildlife Serv.*, 273 F.2d 1229, 1236 (9th Cir.
8 2001). The Court finds the USFS went beyond the requirements of *Moseley*
9 by examining the recommendations of the *Beschta* Report as an alternative.

10 Before the Court is not a "substantial dispute [about] the size,
11 nature, or effect" of the FFP, *Evans*, 371 F.3d at 489, but rather merely
12 Plaintiffs' "opposition to a use." *Id.* This opposition is insufficient
13 to justify entry of a PI. See *Id.* Accordingly, the Court is unlikely
14 to find Plaintiffs' disagreement with the USFS gives rise to an arbitrary
15 conclusion by the USFS that an EIS does not need to be prepared.

16 **c. Cumulative Impacts**

17 Plaintiffs assert the USFS did not take a hard look at the
18 cumulative impacts of past, present, and future projects on the FFP. In
19 their reply and at oral argument, Plaintiffs supplemented this claim by
20 pointing out the EA failed to sufficiently discuss in detail the scope
21 and timeline of past timber activities in the FFP area, citing to *Lands*
22 *Council v. Powell*, 395 F.3d 1019, 1030 (9th Cir. 2005). Defendant
23 responds by claiming the FFP does not possess the same nexus between
24 prior harvests and the current environmental harm in the area. Further,
25 Defendant-Intervenor contends the Council of Environmental Quality
26 ("CEQ") recently published a guidance regarding cumulative effects

1 analysis that accords with the scope of past analysis done by the USFS
2 here.

3 "Cumulative effects analysis requires the Environmental Impact
4 Statement to analyze the impact of a proposed project in light of that
5 project's interaction with the effects of past, current, and reasonably
6 foreseeable future projects." *Lands Council*, 395 F.3d at 1027;
7 *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 809-810 (9th
8 Cir. 1999). An EA must assess cumulative impacts. However, the degree
9 of cumulative effects analysis in an EA may be less than that required
10 in an EIS. See *Idaho Sporting Congress v. Rittenhouse*, 305 F.3d 957, 957
11 (9th Cir. 2002). Further, "NEPA imposes [only] procedural requirements
12 designed to force agencies to take a 'hard look' at environmental
13 consequences." *Lands Council*, 395 F.3d at 1027 (quoting *Earth Island*
14 *Inst. v. United States Forest Serv.*, 351 F.3d 1291, 1300 (9th Cir.
15 2003)). Thus, in considering a challenge to the USFS's compliance with
16 these procedural requirements, "[t]he role of the courts is simply to
17 ensure that the agency has adequately considered and disclosed the
18 environmental impact of its actions and that its decision is not
19 arbitrary or capricious." *Baltimore Gas & Elec. Co. v. Natural Res. Def.*
20 *Council, Inc.*, 462 U.S. 87, 97-98 (1983). "[A court] may not substitute
21 [its] judgment for that of the agency concerning the wisdom or prudence
22 of a proposed action." *Laguna Greenbelt, Inc. v. United States Dep't of*
23 *Transp.*, 42 F.3d 517, 523 (9th Cir. 1994).

24 First, the Court finds Plaintiffs' reliance on *Lands Council* for the
25 proposition that the EA did not sufficiently discuss in detail the scope
26 and timeline of past timber activities in the FFP area misplaced. The

1 Court accepts the rule in *Lands Council* that an EIS must take a hard
2 look at the cumulative impacts of an action, but the Court finds the
3 facts of *Lands Council* distinguishable because *Lands Council* did not
4 involve a salvage operation following a natural catastrophic event.
5 Rather, it involved a watershed restoration project, which included a
6 component calling for harvesting live trees. *Id.* at 1025. In *Lands*
7 *Council*, there was a conceded nexus between the past extensive timber
8 logging and the environmental harm facing the area. *Id.* The Ninth
9 Circuit found the EIS's lack of "description of past timber harvests and
10 previous environmental harm caused by these past timber harvests"
11 prevented the public and the USFS from engaging in the required
12 procedural decision-making mandated by NEPA. *Id.* at 1028. Whereas,
13 here, the nexus of prior harvests and environmental harm does not exist.
14 In the present case, the widespread catastrophic fire overshadowed
15 previous timber sales in the area, making previous activities' impacts
16 on the land insignificantly small. The Court finds the holding in *Lands*
17 *Council* does not apply here given the lack of nexus between the effects
18 of previous activities in this area and the present state of the
19 woodlands within the Wenatchee River watershed. Regardless, the USFS
20 addressed the cumulative impacts of the FFP in the EA.¹

21
22
23 ¹Chapter three of the EA contains a large amount of cumulative
24 impacts analysis for all four major alternatives in the following areas:
25 timber recovery, MLSAs, soils, fuels, water quality, wildlife, proposed
26 endangered, threatened, and sensitive plants, fish, forest stand
establishment, range, scenic and landscape character, roadside safety,
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1 In addition, the Court finds the EA's cumulative analysis compliant
2 with CEQ's recent publication, *Guidance on the Consideration of Past*
3 *Action in Cumulative Effects Analysis*, (Ct. Rec. 32-2). CEQ was created
4 by NEPA and is the body responsible for promulgating NEPA's implementing
5 regulations. 42 U.S.C. § 4344; *Jones v. Gordon*, 792 F.2d 821, 827 (9th
6 Cir. 1986). As a result, CEQ's interpretation of NEPA is entitled to
7 substantial deference. *Andrus v. Sierra Club*, 442 U.S. 347, 358 (1979).
8 Accordingly, the Court finds CEQ's recent June 24, 2005, publication
9 authoritative, especially given that it is the most recent discussion
10 of cumulative effects analysis.² The CEQ explained agencies should use
11 scoping to identify "what information is necessary for a cumulative
12 effects analysis" and focus on information "'essential to a reasoned
13 choice among alternatives.'" *Id.* at 1 (quoting 40 C.F.R. § 1502.22(a)).
14 "Agencies are not required to list or analyze the effects of individual
15 past actions unless such information is necessary to describe the
16 cumulative effects of all past actions combined," and the agency's
17 decision is entitled to substantial discretion as to the extent of the
18 inquiry required. *Id.* at 2 (citing *Marsh v. Or. Nat. Resources Council*,
19 490 U.S. 360, 377-77 (1989)). An adequate analysis focuses "on the
20 current aggregate effects of past actions without delving into the
21 historical details of individual past actions." *Id.* Agencies may limit
22 the scope of such analysis "based on practical considerations." *Id.*
23 (citing *Kleppe v. Sierra Club*, 427 U.S. 390, 414 (1976)). EAs finalized
24 _____
25 and recreation.

26 ² *Lands Council* was amended and superseded on January 24, 2005, 395
F.3d 1019 (9th Cir. 2005).

1 with a Finding of No Significant Impact "usually involve only a limited
2 cumulative impact assessment to confirm" the effects are insignificant.
3 *Id.* at 3. Under these requirements, the Court finds the USFS took the
4 necessary 'hard look' at previous environmental impacts.

5 Plaintiffs also assert the USFS failed to consider cumulative
6 impacts associated with the "reasonably foreseeable future" activity of
7 fire suppression in the watershed. (Ct. Rec. 15-1 at 12.) However, the
8 EA does extend discussion to the effects of the fire suppression
9 activities related to the Fischer Fire, including the creation of fire
10 lines, the paths of fire fighting and support vehicles, the designation
11 of safety zones, rehabilitation efforts, and other issues. EA at 2-36.
12 Further, the Fuel Loading section of Chapter three of the EA gives an
13 analysis of the increased/decreased fire risks associated with the
14 proposed alternative. *Id.* at 3-52. The section assesses the increased
15 fire risks associated "with the availability of the larger CWD (*i.e.*
16 fallen snags) left on site as it decays to receptive fuels and intermixes
17 with the fine fuels produced 10-40 years out. Prescribed fire or
18 mechanical treatment during a future period could ameliorate the high
19 fire severity effects possible." *Id.* The EA also analyzes the effects
20 of other future events, such as private land salvage logging and the
21 proposed Eagle Forest Health Project. *Id.* at 2-38. Without the Eagle
22 Forest Health Project, the EA notes a potential environmental threat of
23 bark beetle infestation could occur. *Id.*

24 In summary, given the existence of a widespread catastrophic event
25 weakening the nexus between past timber activities and the current
26 environmental harm, combined with the USFS's compliance with CEQ

1 regulations and the deference accorded under *Alexander*, the Court is
2 likely to find the USFS did not fail to take a hard look at the
3 cumulative effects of past, present, and reasonably foreseeable future
4 projects on the FFP. See *Neighbors of Cuddy Mountain v. Alexander*, 303
5 F.3d 1059, 1071 (9th Cir. 2002) ("Under NEPA [the court] defer[s] to an
6 agency's determination of the scope of its cumulative impact review").

7 **2. Range of Alternatives**

8 Plaintiffs allege the USFS did not consider a reasonable range of
9 alternatives in deciding on its chosen course of action for the FFP.
10 (Ct. Rec. 15-1 at 13.) NEPA requires agencies to "rigorously explore
11 and objectively evaluate all reasonable alternatives" to a proposed plan
12 of action that has significant environmental effects. 40 C.F.R. §
13 1502.14(a). Such a consideration of alternatives is "the heart" of an
14 EIS. *City of Carmel-by-the-Sea v. United States Dep't of Transp.*, 123
15 F.3d 1142, 1155 (9th Cir. 1997). However, in deciding whether an action
16 will have significant effect - and thereby, whether to actually produce
17 an EIS - the range of alternatives the USFS must consider is determined
18 by the "nature and scope of the proposed action." *Idaho Conservation*
19 *League v. Mumma*, 956 F.2d 1508, 1520 (9th Cir. 1992) (quoting *Cal. v.*
20 *Block*, 690 F.2d 753, 761 (9th Cir. 1982)). Thus, NEPA does not require
21 the USFS to "consider every possible alternative to a proposed action,
22 nor must it consider alternatives that are unlikely to be implemented or
23 those inconsistent with its basic policy objectives." *Moseley*, 80 F.3d
24 at 1404; *Mumma*, 956 F.2d at 1522. Nevertheless, "the existence of a
25 viable but unexamined alternative renders" the NEPA procedures
26 inadequate. *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051,

1 1057 (9th Cir. 1985). Thus, while the purpose and need for a project is
2 the determining factor in considering the range of alternatives to be
3 examined, if Plaintiffs can demonstrate an alternative better suited to
4 accomplishing this purpose was not considered, the USFS's procedure will
5 be held inadequate. See *id.*

6 As discussed in the EA, the express purposes and needs of the FFP
7 are to: (1) recover the economic value of a proportion of the dead and
8 dying trees in the Fischer Fire area; (2) improve road-side safety by
9 removing hazardous trees along roadways; and (3) accelerate reforestation
10 of desired tree species in areas where no seed source remains. EA at 1-
11 6; DN at 1. In accordance with these declarations, the USFS examined a
12 variety of alternatives and their ability to meet the FFP's purpose and
13 need. The USFS initially examined 23 different alternatives ranging in
14 degree of activity. EA at 2-4, 2-28. Four of these alternatives were
15 selected for detailed examination through the EA's discussion, including
16 the no-action alternative. *Id.* at 2-4. A modified version of
17 Alternative Two described in the EA was selected as the appropriate
18 course of action after reviewing the EA and public commentary. DN at 3.
19 Modified Alternative Two includes salvage harvest of 2,112 acres of the
20 10,873 acres of the burned National Forest woodlands.³ (Ct. Rec. 31-4 ¶
21 4.); EA at 2-6. Hazardous roadside trees will be removed to provide safe
22 and adequate road access, and approximately 14.4 miles of currently
23 closed roads and 1.3 miles of new road will be used for the project and

24
25 ³At oral argument, defense counsel stated the FFP only encompassed
26 1,946 acres. The Court recognizes the disparity, but does not find it
to be dispositive for any of Plaintiffs' claims.

1 closed upon its completion. EA at 2-6. Reforestation will occur over
2 approximately 3,486 acres, including areas that will not possess a
3 natural seed source due to the cataclysmic effects of the fire for many
4 decades. *Id.* at 2-7. Alternative One suggested no action or salvage
5 logging, Alternative Three proposes no action in the Eagle MLSA, and
6 Alternative Four sought to reduce economic risk by eliminating ponderosa
7 pine dominated units from salvage due to the propensity of the wood to
8 become infested with blue-stain fungus. *Id.* at 2-4 to 2-11.

9 Plaintiffs assert the USFS failed to consider a reasonable range of
10 alternatives beyond salvage logging. (Ct. Rec. 34-1 at 12.) However,
11 the USFS need not consider alternatives inconsistent with its basic
12 policy objectives. *Moseley*, 80 F.3d at 1404. Even so, the USFS
13 considered a no-action alternative as well as an alternative in line with
14 the recommendations of the 1995 *Beschta* report. This no-action
15 alternative was developed in depth along with the three other salvaging
16 alternatives discussed above. Further, simply because Plaintiffs
17 disagree with the choice of alternatives by the USFS is not enough to
18 merit injunctive relief, even if there are strong environmental concerns
19 backing the disagreement. *City of Carmel-by-the-Sea*, 123 F.3d at 1159;
20 *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)
21 ("If the adverse environmental effects of the proposed action are
22 adequately identified and evaluated, the agency is not constrained by
23 [NEPA] from deciding that other values outweigh the environmental
24 costs"). As judicial review is only procedural and a court cannot impose
25 its own judgment in substitution for that of the USFS under *Laguna*
26

1 *Greenbelt*, the Court is unlikely to find the USFS failed to consider a
2 reasonable range of alternatives. *Laguna Greenbelt*, 42 F.3d at 523.

3 **3. Snag Removal in the Eagle MLSA**

4 Plaintiffs assert the breadth of authorization of snag removal in
5 the Eagle MLSA by the USFS violates NFMA. NFMA requires the USFS to
6 "develop, maintain, and, as appropriate, revise land and resource
7 management plans, for units of the National Forest System." 16 U.S.C.
8 § 1604(a). In addition, NFMA obligates the USFS to "balance competing
9 demands on national forests, including timber harvesting, recreational
10 use, and environmental preservation." *Lands Council*, 379 F.3d at 742 n.2
11 (quoting 16 U.S.C. § 1607 and citing 16 U.S.C. § 528-531). Forest
12 planning and management under NFMA occurs in stages: first, the USFS
13 develops the LRMP for the National Forest and then the USFS may assess
14 site-specific projects. *Neighbors of Cuddy Mountain v. United States*
15 *Forest Serv.*, 137 F.3d 1372, 1376 (9th Cir. 1998). Site-specific
16 decisions made by the USFS must be consistent with the broader Forest
17 Plan. *Id.* 137 F.3d at 1376-1377; 16 U.S.C. 1604(I); 36 C.F.R. § 219.10.

18 The WLRMP is the land use plan governing public lands in the
19 Wenatchee National Forest ("WNF"); whereas, the NFP is the broader Forest
20 Plan for all Bureau of Land Management land within the range of the
21 northern spotted owl. Since the WNF lies within the range of the
22 northern spotted owl, the WLRMP must be consistent with the requirements
23 of the NFP.

24 The NFP provides a set of standards and guidelines for salvage in
25 MLSA areas "following a stand-replacing event such as those caused by .
26 . . fires." (Ct. Rec. 31-5 at 7.) In fact, the NFP specifically notes

1 "the potential for benefit to specifiers associated with late-successional
2 forest conditions from salvage is greatest when stand-replacing events
3 are involved." *Id.* at 8. Thus, snag removal is authorized within the
4 MLSA. However, the NFP states, after a stand-replacing wildfire, the
5 USFS "should focus on retaining snags that are likely to persist until
6 late-successional forest conditions have developed and a new stand is
7 again producing large snags." (Ct. Rec. 31-5 at 8.)

8 The USFS has demonstrated an effort to retain snags that will
9 persist until late-successional forest conditions would develop. As
10 noted earlier, the USFS proposes to only salvage injured trees up to 20"
11 in diameter with a 75 percent or higher probability of dying and injured
12 trees larger than 20" in diameter with an 85 percent or higher mortality
13 probability. *Id.* at 10. Any trees larger than 36" in diameter -
14 coincidentally, the type of trees most likely to survive until late-
15 successional conditions have developed - would be retained. *Id.* Further,
16 while the RRSS would initially reduce snag density in the Eagle MLSA, the
17 "planting of 523 acres where there is no immediate seed source within the
18 MLSA would accelerate reforestation and establish late-successional
19 forest decades faster" than taking no action, thereby coinciding with the
20 express purpose of the NFP guidelines - to promote late-successional
21 habitat. EA at 3-13. The USFS was also careful to not enter or schedule
22 any salvage activities in current late-successional habitat, including
23 spotted owl allocations. *Id.*

24 During oral argument, Plaintiffs challenged the USFS's snag
25 retention levels as insufficient under the WLRMP standards and
26 guidelines. Under the WLRMP, the management goals for dry forest within

1 the Eagle MLSA requires 7 snags per acre be maintained over time and 14
2 snags per acres be retained if no green trees exist. EA at 3-8 to 3-9.
3 Within the mesic forest group, the WLRMP requires 14 snags per acre be
4 maintained over time and 21 snags per acre be retained if no green trees
5 exist. EA at 3-9. Plaintiffs assert the EA provides in dry forest only
6 6.1 snags per acre will be maintained over time and 10.3 snags per acre
7 will be retained where no green trees exist. Further, they claim the EA
8 also states in mesic forest only 13 snags per acre will be maintained
9 over time and 17.2 snags per acre will be retained where there are no
10 green trees. Under these calculations, the USFS's snag retention would
11 violate the WLRMP.

12 The Court's understanding of the final calculations expressed in the
13 EA differs from that of Plaintiffs.⁴ In support of their contentions,
14 Plaintiffs cite to Table 3.31 of the EA, which discusses snag density
15 both before and after the Fischer Fire. EA at 3-91. The numbers
16 demonstrate the significant increases in snag density resulting from the
17 wildfire. Additionally, the table discusses snag *recruitment* believed
18 to occur over time in dry and mesic forest regions. It provides 6.1
19 snags per acre will potentially be recruited in the dry regions of the
20 MLSA over the short term and 10.3 snags per acre will be recruited over
21 a further delayed time period. *Id.* Within the mesic forest, 13 snags
22 per acre and 17.2 snags per acre will also potentially be recruited,
23 respectively. *Id.* In contrast, Table 3.33 discusses the snag densities

24
25 ⁴Plaintiffs also cited to a table within the DN during oral
26 argument. After careful examination of the DN, the Court cannot locate
any such table.

1 expected to exist according to treatment plans by the various
2 alternatives. EA at 3.95. Alternative two, the proposal chosen by the
3 USFS, identifies 26.1 snags per acre will be retained in dry forest and
4 25.8 snags per acre in mesic forest. *Id.* These numbers correspond to
5 those expressed by Defendant-Intervenor at oral argument. Thus, the
6 Court finds Table 3.31 did not express snag density retention numbers and
7 holds the USFS complied with WLRMP standards and guidelines.

8 The Court finds the USFS has placed sufficient limitations on its
9 activities within the MLSA in order to balance the competing demands on
10 national forests and has complied with the standards expressed in the
11 WLRMP. As such, it is likely the Court will hold the USFS's snag removal
12 in the Eagle MLSA does not violate NFMA.

13 **4. Major Purpose: Economic Recovery**

14 Plaintiffs contend the USFS violated both the NFP and NFMA by
15 identifying the major purpose of salvage activities within the MLSA as
16 economic recovery through salvage logging. The crux of Plaintiffs'
17 argument stems from the NFP's Final Supplemental Environmental Impact
18 Statement ("FEIS"), which provides "[s]alvage [in Late-Successional
19 Reserves] will not be driven by economic or timber sale program factors."
20 (Ct. Rec. 34-2 at 12.)

21 Throughout both the EA and DN, the USFS explicitly states the major
22 purpose of the FFP is economic recovery. EA at 1-6, 1-7, 1-8, 1-31, 2-5,
23 2-9, 2-29, 2-31, 2-32, 2-33, 3-15. Nevertheless, the Court recognizes
24 this to be the major purpose of the entire FFP's salvage logging, of
25 which activity in the Eagle MLSA is only a small part. The Modified
26 Alternative Two selected by the USFS will salvage log 2,112 acres of land

1 in the WNF. (Ct. Rec. 31-4 ¶ 4.) Of this land, only 350 acres represent
2 MLSA allocations. (Ct. Rec. 31-4 ¶ 4.) Therefore, 1,762 acres of the
3 project occur within Matrix lands, commonly allocated for economic
4 logging. Since the EA deals with the entire FFP, economic recovery does
5 drive the whole project; however, it may not be the major motivating
6 factor for activity within the Eagle MLSA.

7 The activity within the Eagle MLSA promotes the development of late-
8 successional habitat. The EA states reforestation will occur over
9 approximately 3,486 acres of land in the FFP, including areas that do not
10 possess a natural seed source, accelerating regeneration of late-
11 successional habitat by many decades. EA at 2-7. This reforestation
12 project collects its necessary funds from the proceeds of the RRSS
13 contracted to Boise. As such, the reforestation would not be possible
14 without the salvage sale's economic recovery. Such a project accords
15 with the NFP restrictions within MLSA allocations, which state "[s]alvage
16 guidelines are intended to prevent negative effects on late-successional
17 habitat, while permitting some commercial wood volume removal." NFP at
18 C-13. The USFS has committed to salvaging some timber for commercial
19 purposes from the MLSA - salvage will only occur on some trees within 350
20 acres of the total 1037 acre allocation - in order to promote the growth
21 of late-successional habitat. EA at 1-4.

22 Thus, the majority of logging for the FFP will occur in Matrix
23 allocations and any salvage logging in the MLSA is offset by the planned
24 reforestation, which will promote the development of late-successional
25 habitat decades sooner. Accordingly the Court is unlikely to find the
26

1 major purpose of the FFP - economic recovery - to conflict with the NFP's
2 MLSA restrictions.

3 **5. Soil Disturbance Standards**

4 Plaintiffs allege the USFS's detrimental soil treatments fail to
5 live up to the standards outlined in the LRMP, violating NFMA. Chapter
6 IV of the WLRMP states "the total acreage of all detrimental soil
7 conditions should not exceed 20 percent of the total acreage within the
8 activity area" and "sites degraded by management activities shall be
9 rehabilitated." WLRMP at IV-97, IV-98.⁵ However, the WLRMP does not
10 specifically address pre-existing soil disturbance for historic entries
11 on a given piece of land. (Ct. Rec. 31-8 ¶ 6.) The EA states further
12 direction comes from the Forest Service Manual, Pacific Northwest Region,
13 Supplement 2500.98-1 section 2520.3, which states: "in areas where more
14 than 20 percent detrimental soil conditions exist from prior activities,
15 the cumulative detrimental effects from project implementation and
16 restoration must, at a minimum, not exceed the conditions prior to the
17 planned activity and should move toward a net improvement in soil
18 quality." EA at 3-16. This finding has previously been recognized in
19 this district. *Kettle Range Conservation Group v. U.S. Forest Serv.*, 148
20 F. Supp. 2d 1107, 1126 (E.D. Wash. 2001) ("The Regional Standard says
21 that, if a site currently exceeds the standard, it can be treated if the
22 treatment results in a net reduction in detrimental soil conditions").

23 Although the court in *Kettle Range* found the USFS failed to properly
24 meet soil quality standards, the holding was due to the USFS's failure

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⁵http://www.fs.fed.us/r6/colville/cow/previous-fp/wenatchee/chap_4_a.htm
ORDER ~ 25

1 to actually set foot in the areas it planned to mitigate, and thus, it
2 could not accurately describe the effects the mitigation measures would
3 have. *Id.* at 1126-1127. Such is not the case here as "soil disturbance
4 was mapped by traversing areas within the fire perimeter, and noting the
5 condition class of soils." EA at 3-16. As such, the USFS has scientific
6 evidence to support the EA's mitigation measure conclusions, and
7 therefore, *Kettle Range* can still apply.

8 The EA's projected course of action "would increase disturbance on
9 approximately 38.8 acres within the project area as a result of skyline
10 yarding . . . [and] 26 acres from landing and road construction." EA at
11 3-30. Within approximately, 65 acres, 42.6 have little or no evidence
12 of pre-existing soil disturbance. *Id.* As noted earlier, Boise has now
13 committed to conducting the RRSS entirely through helicopter logging
14 techniques. (Ct. Rec. 13-1 ¶ 8.) Thus, the RRSS will not increase
15 disturbance on the 38.8 acres previously accounted for by skyline
16 yarding. The maximum area which could experience detrimental soil
17 conditions is 26 acres, and this number is likely smaller as a portion
18 of this area likely falls into the 42.6 acres with little or no prior
19 disturbance and road construction will likely not create sufficient new
20 disturbances to raise to a serious detrimental level. Moreover,
21 subsoiling mitigation measures - tilling to reduce detrimental compaction
22 - will be used on 52.4 acres of the project area. EA at 3-31; (Ct. Rec.
23 31-8 ¶ 18.) As a technique, subsoiling reduces compaction and improves
24 soil function by effectively loosening the soil. EA at 2-25, 3-31, O-22;
25 (Ct. Rec. 31-8 ¶¶ 18-19.) Thus, by subtracting the possible maximum of
26 26 acres to be detrimentally affected from the 52.4 acres to experience

1 mitigation measures, at least 26.4 acres of areas near or above soil
2 standards would show a net improvement in soil conditions.

3 Plaintiffs allege the subsoiling techniques only possess a 40
4 percent chance of actually improving the soil, referencing the past
5 project undertaken by Mr. Karrer. (Ct. Rec. 34-1 at 18.) Yet,
6 Plaintiffs' position references the effects of subsoiling on 10 skid
7 trails used as a reference point for the project and not the 33 transects
8 which were the actual focus of the mitigation techniques. *Id.* All 33
9 of the transects subsoiled in the project experienced increased
10 penetration depths as compared to untreated sites, demonstrating an
11 apparent 100 percent chance of soil function improvement, allowing for
12 vegetation recovery and increased water penetration. (Ct. Rec. 31-8 ¶
13 19.) The Court finds the activities planned in the RRSS area are likely
14 to not exceed the detrimental conditions existing prior to the FFP and
15 will likely create a net improvement in soil quality in accord with the
16 Forest Service Manual and *Kettle Range*. As such, the Court grants the
17 necessary deference to the USFS and is unlikely to find a NFMA violation
18 with respect to WLRMP soil standards.

19 **6. Irreparable Injury and Balance of Hardships**

20 Based on the foregoing, the Court concludes Plaintiffs have not
21 demonstrated a significant likelihood of success on the merits and will
22 require a greater degree of harm to justify equitable relief than if they
23 made a stronger showing on the merits. Plaintiffs claim the RRSS will
24 result in irreparable environmental injury if a preliminary injunction
25 is not invoked. In support of these allegations, Plaintiffs cite to
26 *Neighbors of Cuddy Mountain*, which states "[t]he old growth forests

1 plaintiffs seek to protect would, if cut, take hundreds of years to
2 reproduce. The forests will be enjoyed not principally by plaintiffs and
3 their members but by many generations of the public." *Id.* at 1382
4 (quoting *Portland Audobon Soc'y v. Lujan*, 884 F.3d 1233, 1241 (9th Cir.
5 1989)). Moreover, Plaintiffs submit a declaration by one of their
6 members detailing the aesthetic and recreational losses he will
7 experience if salvage logging occurs, (Ct. Rec. 34-5).

8 The timber harvests Plaintiffs cite in *Neighbors of Cuddy Mountain*
9 and *Lujan* are distinguishable from the FFP. Neither timber harvest in
10 the these cases were proposed after an uncharacteristically severe burn,
11 which caused high tree mortality and resulted in the removal of "large
12 expanses of dry forest, including nearly all the mature and old growth
13 habitat." EA at 3-103. Within the MLSA, the USFS proposes to only
14 salvage injured trees up to 20" in diameter with a 75 percent or higher
15 probability of dying and injured trees larger than 20" in diameter with
16 an 85 percent or higher mortality probability. DN at 10. All trees
17 greater than 36" in diameter will be retained, regardless of their
18 mortality probability. *Id.* Further, the USFS propose to reforest and
19 provide new seed sources "needed to develop late successional or old-
20 growth habitat in the long-term." EA at 3-133. Thus, the FFP is quite
21 different from the timber harvests Plaintiffs cite, and as such, does not
22 pose a significant threat to old growth habitat, but rather would
23 establish late-successional and old growth habitat decades faster than
24 taking no action. EA at 3-13.

25 Balanced against Plaintiffs' asserted aesthetic and recreational
26 harms are the financial losses to the government and to Boise if the RRSS

1 is enjoined. In making a decision as to whether to grant injunctive
2 relief, courts are to pay "particular regard [to] the public
3 consequences." *Weinberger*, 102 S. Ct. 1798, 1803. Due to the rapid
4 decay of the dead or dying timber due to the blue-stain fungus and bark
5 beetle infestations, further delay of the RRSS would likely result in a
6 cancellation of the RRSS by Boise. (Ct. Rec. 31-4 ¶ 10.) This
7 cancellation would result in a loss of \$159,700 of revenue for the
8 government from the sale, as well as losses in road maintenance dollars
9 and brush disposal funds. *Id.*; (Ct. Rec. 31-1 at 32.) Boise will lose
10 out on the original \$287,000 timber profit and be forced to purchase the
11 volume on the open market to keep the mill running, at a cost of
12 \$3,575,000. (Ct. Rec. 13-1 ¶ 15.) In addition, Boise operates several
13 mills in the region that will process the harvested trees, which employ
14 over 1,100 people and also contract with at least 800 additional people
15 working in the field providing logs for the mills. (Ct. Rec. 13-1 ¶ 2.)
16 These employees and families will likely be adversely economically
17 effected if Boise loses out on several million dollars from the
18 injunction. Enjoinder of the RRSS would also remove the benefits of
19 reforestation to areas without seed sources and improved soil
20 characteristics, which would unnecessarily and unreasonably eliminate
21 actions designed to produce late-successional and old growth habitat much
22 sooner, a significant benefit to this forest.

23 Considering the evidence and allegations of harm that will result
24 from granting or withholding equitable relief, the interests of the
25 public, and Plaintiffs' showing on the merits, the Court concludes
26 preliminary injunctive relief is not warranted in this case.

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiffs Conservation Northwest and Cascadia Wildlands
3 Project's Motion for Preliminary Injunction, (**Ct. Rec. 3**), is **DENIED**.

4 2. The current injunction is continued and will **expire seven days**
5 **after this Order is entered** to allow the Plaintiffs an opportunity to
6 file an appeal and the Ninth Circuit to react to the appeal if necessary.

7 **IT IS SO ORDERED.** The District Court Executive is directed to enter
8 this Order and provide a copy to counsel.

9 **DATED** this 26th day of August, 2005.

10
11 S/Edward F. Shea

12 EDWARD F. SHEA
13 United States District Judge

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